

CAUSE NO. \_\_\_\_\_

**PHILLIP PAUL BRYANT**  
*Plaintiff*

Vs.

**THE CITY OF HOUSTON, TEXAS**  
*Defendant*

§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

---

## PLAINTIFF'S ORIGINAL PETITION

---

TO THE HONORABLE JUDGE OF SAID COURT:

**PHILLIP PAUL BRYANT** ("Plaintiff"), by and through his attorney of record, hereby complain of the City of Houston, Texas, and for cause of action and would respectfully show this Honorable court the following:

### I. INTRODUCTION

1. This suit, which arises under the Texas Religious Freedom Restoration Act, Tex. Civ. Prac. & Rem. Code §§ 110.001, *et seq.* ("TRFRA") and Article I, Section 6 of the Texas Constitution, is brought pursuant to Rule 190.3 of the Texas Rules of Civil Procedure and is to be administered under Discovery Control Plan Level 2.
2. Plaintiff demands a JURY TRIAL.

### II. PARTIES

3. Plaintiff is a resident of the City of Houston and Harris County, Texas. At all times material hereto, Plaintiff's religious beliefs have motivated them to seek out and feed those in need throughout the City of Houston without prior written consent.
4. Defendant City of Houston, Texas, is a municipality and government agency as defined by Tex. Civ. Prac. & Rem. Code § 110.001(a)(2) and may be served with citation by serving

Mayor Sylvester Turner through the City of Houston, Texas, Secretary, Anna Russell, located at 900 Bagby Street, Houston, Texas 77002.

### **III. VENUE**

5. Venue of this proceeding is proper in Harris County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code §§ 15.002-15.003. All of the events giving rise to this claim occurred in Harris County, Texas. Defendant municipality is located in Harris County, Texas.

### **IV. JURISDICTION**

6. The amount in controversy exceeds the minimal jurisdictional limits of this Court. Jurisdiction is proper pursuant to Tex. Civ. Prac. & Rem. Code § 110.005(c).
7. This Court has jurisdiction to determine the validity of Houston, Texas, Ordinance No. 2012-269 (April 4, 2012) (referred to collectively as “the Ordinance”) and to grant any declaratory and injunctive relief for which Plaintiff will show he is entitled. As set forth below, this ordinance is unconstitutional and its enforcement will irreparably injure Plaintiff’s vested property rights. Civ. Prac. & Rem. § 37.004; *Passel v. Ft. Worth Independent School Dist.*, 440 S.W.2d 61, 63 (Tex. 1969).
8. Pursuant to Tex. R. Civ. Pro. 47(c), Plaintiff seeks monetary relief of \$100,000 or less and non-monetary relief.

### **V. FACTS**

9. The Houston City Council passed the Ordinance after City Council meetings on March 6, March 20, and April 3, 2012.

10. Dozens of Christian, Jewish, Muslim, and Hindu citizens of the City of Houston and Harris County who feed the homeless without written permission as a free exercise of their religious beliefs attended the meetings and asked City Council to oppose the Ordinance to protect their religious freedoms. Several licensed attorneys assured City Council that the Ordinance would violate the religious freedoms of the citizens of Houston. Despite fierce opposition and highly-publicized criticism, Houston City Council passed Ordinance No. 2012-269 on April 4, 2012.
11. Houston, Texas, Ordinance No. 2012-269 (April 4, 2012) was codified as Houston, Texas, Code of Ordinances §§ 20-251—20-257 (2012) and becomes effective on July 1, 2012.
12. The Ordinance criminalizes any organization or individual who sponsors or conducts a food service event on public or private property without the advance written consent of the public or private property owner. Hous., Tex., Code of Ordinances § 20-252.
13. Defendant defines a “food service event” as each instance in which charitable food services are provided to more than five individuals, *id.* § 20-251, and “charitable food services” as providing food without charge, payment, or other compensation to benefit those in need at an outdoor location not owned, leased, or controlled by the individual or organization providing the food. *Id.*
14. The Ordinance provides the Houston Department of Health and Human Services (“HDHHS”) with the broad authority to place further restrictions on food preparation, food transportation, food storage, and any other food safety, sanitation, or public health-related issues that it deems are associated with conducting food service events. *Id.* § 20-255.
15. Violation of the Ordinance is a criminal misdemeanor and is punishable by a fine of not less than \$50 nor more than \$2000. Hous., Tex., Code of Ordinances § 20-19(c).

16. The preamble of the Ordinance alleges three policy reasons for the Ordinance's enactment:
- 1) the benefit to food recipients, food providers, and property owners from the coordination of charitable food services, 2) the improved safety of food, food providers, and food recipients, and 3) the reduction and regulation of the generation of litter and unsanitary materials that negatively affect property owners and the safety of the general public.
- Houston, Texas, Ordinance No. 2012-269 (April 4, 2012).
17. Beginning on July 1, 2012, the Ordinance will criminalize those who conduct food service events as a free exercise of religion without prior written consent and will empower the HDHHS to place further restrictions upon such individuals.
18. Plaintiff, a devote Christian, finds Defendant's Charitable Feeding Ban a mean-spirited law that is meant to harass him in his exercise of the teachings of Jesus Christ.
19. Plaintiff keeps cans of tuna and bottled water in his car.
20. He spontaneously gives food to the poor when Christ compels him to do so or when someone hungry asks him for food.
21. Defendant requires Plaintiff to get a permit to share food and water because he shares it with more than five people.
22. Plaintiff cannot get a permit because there is no specific location where he will share food.
23. Plaintiff cannot ask Defendant for a permit because he does not know in advance when Christ will compel him to share food or when someone hungry will ask him for help.
24. In addition, Plaintiff cannot in good conscience agree to the terms that Defendant requires on Defendant's Charitable Food Service Participation Form.
25. Defendant's Charitable Feeding Ban is just plain wrong.

26. It regulates a natural expression of human compassion and inhibits Plaintiff from sharing food and water with those that need help.
27. When Plaintiff drives around he is immediately criminalized because he doesn't have prior written permission for the locations where he finds starving people - a significant portion of Houston's homeless rely on these forms of spontaneous feeding.
28. Asking for permission is never easy, free, quick, or fair.
29. The Charitable Feeding Ban is not in furtherance of a compelling government interest and is not the least restrictive means of furthering that non-existent interest.
30. In fact, it does not achieve any clear policy objectives.
31. The extra expenses that will be incurred are not necessary and have not been budgeted.
32. It creates additional work and bureaucracy for Plaintiff without any clearly identified benefits.
33. The Charitable Feeding Ban punishes, but does not reward.
34. There were no studies or data presented to justify this ordinance.
35. When interviewed, over 90% of homeless downtown indicated that without volunteer groups able to help them in the streets, they would turn to crime, begging for money, or less healthy options.
36. Plaintiff has the religious right to share food with the needy and Defendant does not have the right to make him ask for permission each time.
37. Plaintiff helps feed the homeless without making financial demands, and as such should be held up as an example, not criminalized.
38. Spontaneous and un-coordinated distribution of food to the needy is a proud Houston tradition and groups have done so for years without problems.

39. When implementing the Charitable Feeding Ban, no studies were produced to document instances of food poisoning, significant food wastage, or the projected impact of these new regulations on homeless populations.
40. The management districts in and near downtown are funded with tax dollars to implement service plans (posted on their websites) that embrace responsibilities that warrant placement of trash receptacles, public toilets and litter removal programs to beautify and rebrand their geographic areas, and already do so to an extent.
41. No laws can eliminate the annoyances the Charitable Feeding Ban is addressing, and trying to do so is wasteful of police time in a futile quest.
42. Plaintiff is morally disgusted by the Charitable Feeding Ban.
43. This about this for a moment: it is legal to give food to animals but its criminal to give food to the homeless.

**VI.**  
**CAUSES OF ACTION:**  
**COUNT ONE: VIOLATION OF TRFRA**

44. Defendant's actions set forth above, as well as other facts that will be developed through discovery, violate the TRFRA, Tex. Civ. Prac. & Rem. Code §§ 110.001, *et seq.* The Ordinance substantially burdens Plaintiff's free exercise of religion, and the City of Houston cannot demonstrate that the Ordinance is in furtherance of a compelling governmental interest and the least restrictive means of furthering that interest.
45. Plaintiff has provided prior written notice to Defendant (see attached)
46. The TRFRA requires the strict scrutiny of any exercise of government authority that substantially burdens an individual's free religious exercise. *Barr v. City of Sinton*, 295 S.W.3d 287, 297 (Tex. 2009). Once a claimant shows that 1) a government agency has

burdened her free exercise of religion and 2) the burden is substantial, the burden of proof shifts to the government agency, which must show that 3) it has a compelling government interest in burdening the claimant's exercise of religion and 4) that it used the least restrictive means of furthering that compelling interest. Civ. Prac. & Rem. § 110.003; *Barr*, 295 S.W.3d at 307-08.

47. The TRFRA defines the free exercise of religion as an act substantially motivated by sincere religious belief. Civ. Prac. & Rem. § 110.001. Most major American religions teach some duty to feed the hungry. Douglas Laycock, *New Directions in Religious Liberty: The Religious Freedom Restoration Act*, 1993 BYU L. Rev. 221, 228 (1993). Feeding the hungry is a human right "at the seams of the world's quilt of faiths and cultures. . . ." Siegfried Wiessner, *Dedication*, 1 Intercultural Hum. Rts. L. Rev. 1, 1-3 (2006). To feed the hungry is a work of both necessity and charity. *Lane v. State*, 150 S.W. 637 (Tex. Crim. App. 1912).
48. It is the free exercise of Plaintiff's religious beliefs to seek out those in need and to feed them when they are hungry and when the opportunity presents itself, regardless of the number of individuals in need of sustenance or whether Plaintiff has prior written permission.
49. As a core precept of their Christian faith, Plaintiff is called to give food to the hungry (*Matthew* 25:35), the afflicted (*Isaiah* 58:10), the crowds (*Matthew* 14:15-21), those lacking in daily food (*James* 2:14-18), and those who have none (*Luke* 3:11).
50. A government action substantially burdens a person's religious exercises if either it truly pressures her to significantly modify her religious behavior or significantly violates her religious beliefs. *Barr*, 295 S.W.3d at 301. A burden can be substantial without being completely prohibitive, *id.* at 305, and a burden is not insubstantial because a person can choose to do something else. *Id.* at 303.

51. The Ordinance substantially burdens the Plaintiff's free exercise of religion as set forth above because it truly pressures Plaintiff to significantly modify their religious behavior of seeking out the needy to provide them with food whenever they are hungry.
52. Those in need throughout the City of Houston move fluidly from property to property.
53. They peaceably congregate in groups that vary in size and often consist of more than five individuals.
54. Food is a naturally perishable product, and Plaintiff cannot accurately predict how much food they will be able to provide for a food service event or when that food will be available.
55. Those lacking in daily food are just as hungry during nights and weekends when written consent is unavailable.
56. The Ordinance's criminal obligation to receive written permission before feeding each separate group of hungry individuals in need places an unreasonable and substantial burden on Plaintiff.
57. The Ordinance's authorization of further HDHHS restrictions on charitable food services places an additional, substantial burden on Plaintiff.
58. Defendant cannot show a compelling government interest for the Ordinance.
59. The Ordinance does not require coordination of charitable food services, nor would such coordination compel Defendant to undermine the religious freedoms of Plaintiff.
60. The Ordinance places no food safety requirements on food, food providers, and food recipients, and evidence of a generalized interest in "health and safety" alone is not sufficient to demonstrate a compelling government interest. *Balawajder v. Tex. Dep't of Crim. Justice Institutional Div.*, 217 S.W.3d 20, 30 (Tex. Ct. App.—Houston [1st Dist.] 2006, no pet.).



61. A person who donates food without written permission is no more likely to litter or serve unhealthy food than one without written permission.
62. Pre-existing ordinances regulate the production of litter, and Defendant can neither show the Ordinance regulates litter nor that the regulation of litter would create a compelling interest in violating Plaintiff's exercise of religious freedom.
63. A presumption exists that the government does not have a compelling interest to restrict Plaintiff's exercise of religious freedom. *Id.* at 27.
64. Defendant cannot show that its Ordinance uses the least restrictive means of furthering any compelling interest.
65. The Ordinance does not directly address the policy concerns that it alleges to accomplish. A criminal ordinance requiring charitable food service providers to receive written permission before providing food to more than five individuals does not further any interest in regulating litter, improving food safety, or coordinating other food service providers. Further, Defendant could utilize its pre-existing litter ordinances, which would be a much less restrictive means of accomplishing its alleged interest.
66. Strict enforcement of the Ordinance would lead to absurd results. Families and friends would suffer criminalization and a fine of up to \$2000 for having a picnic or barbeque in one of Defendant's parks without first obtaining the written permission of Defendant or reducing their numbers to five or less.

**COUNT TWO: VIOLATION OF TEX. CONST. ART. I, § 6**

67. Plaintiff incorporates the foregoing paragraphs herein by reference.
68. Defendant's actions set forth above, as well as other facts that will be developed through discovery, violate Article I, Section 6 of the Texas Constitution.

69. The Texas Constitution requires that all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences, and no human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion. Tex. Const. art. I, § 6.
70. The Ordinance violates and irreparably injures Plaintiff's natural and indefeasible vested property right to seek out and feed the needy under the dictates of their own consciences and their Christian faith without substantial and unnecessary interference by Defendant.

**VII.  
JURY DEMAND**

71. Plaintiff hereby make their request for a jury trial in this cause pursuant to Rule 216 of the Texas Rules of Civil Procedure and deposit with the District Clerk of Harris County, Texas, the jury fee.

**VIII.  
APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION**

72. Because Defendant has engaged in the unlawful acts and practices described above, Defendant has violated and will continue to violate the law as alleged in this Petition. Unless immediately restrained by this Honorable court, Defendant will continue to violate Tex. Civ. Prac. & Rem. Code §§ 110.001, *et seq.* and Tex. Const. art. I, § 6, which will cause immediate, irreparable injury, loss and damage to Plaintiff and to the general public. Therefore Plaintiff, request a TEMPORARY INJUNCTION and PERMANENT INJUNCTION as indicated below.

**IX.  
PLAINTIFF MAKES 194 REQUESTS TO DEFENDANT**

73. Pursuant to Rule 194, Defendants are requested to disclose, within 50 days of service of this

request, the information or material described in Rule 194.2.

**X.  
PLAINTIFF'S EXPERT DESIGNATIONS**

74. Plaintiff may call the following experts who are retained:

Eric Dick, LL.M.  
3701 Brookwoods Dr.  
Houston, Texas 77092  
(832) 207-2007 Office  
(713) 893-6931 Facsimile

Randall L. Kallinen  
511 Broadway Street  
Houston, Texas 77012  
(713) 320-3785 Office  
(713) 893-6737 Facsimile

The above attorneys may be called by Plaintiff to testify as an expert witness at the trial of this action, pursuant to Rule 702, Tex. R. Evid., on topics of reasonable and necessary attorney's fees incurred or recoverable by any party to this lawsuit. Such expert is familiar with the average and reasonable attorney fees usually and customarily charged by attorneys in various Texas Counties for the handling of similar claims. The expert identified are aware of the various necessary efforts expended in prosecuting this suit on behalf of Plaintiff, and the reasonable charges therefore, and are expected to testify that the attorney's fees incurred by Plaintiff in its pursuit of this matter are reasonable and necessary, and that the attorney's fees incurred by Defendant may not be reasonable or necessary.

The mental impressions and opinions are that fees and costs associated with this litigation are reasonable, necessary and customary in this county and surrounding counties. A reasonable fee to be charged in this case is \$450.00 to 500.00 per hour in consideration with several factors, including:

- The nature and complexity of the case;
- The nature of the services provided by counsel;
- The time required for trial;
- The amount of money involved;
- The client's interest that is at stake;
- The responsibility imposed on counsel;
- The skill and expertise involved; and
- Those matters enumerated in State Bar Rule 1.04(b) (1)-(8), which are:

- The time and labor required, the novelty and difficulty of the questions presented and the skill required to perform the legal services properly;
- The likelihood, if apparent to the client, that acceptance of the particular employment will preclude other employment by the lawyer;
- The fee customarily charged in the locality for similar legal services;
- The amount involved and the results obtained;
- The time limitations imposed by the client or the circumstances;
- The nature and length of the professional relationship with the client;
- The experience, reputation and ability of the lawyer or lawyers performing the service.

## XI. PRAYER

75. Plaintiff respectfully prays for the following relief as permitted by Tex. Civ. Prac. & Rem.

Code § 110.005 and Article I, § 6 of the Texas Constitution:

- a. Temporary injunction after due notice and hearing, as well as permanent injunction upon final hearing, to restrain and enjoin Defendant, Defendant's successors, assigns, officers, agents, servants, employees, attorneys, and any other person in active concert or participation with Defendant, from enforcing Houston, Texas, Ordinance No. 2012-269 (April 4, 2012).
- b. Declaratory judgment that Houston, Texas, Ordinance No. 2012-269 (April 4, 2012) violates Tex. Civ. Prac. & Rem. Code §§ 110.001, *et seq.* and Article I, § 6 of the Texas Constitution.
- c. Attorney's fees, costs, and expenses;
- d. Such other and further relief, at law or in equity, general or specific, to which Plaintiff may show himself justly entitled.

Best Regards,



Eric B. Dick, LL.M.

SBN: 24064316

FIN: 1082959

**DICK LAW FIRM, PLLC**

3701 Brookwoods Drive

Houston, Texas 77092

(832) 207-2007 Office

(713) 893-6931 Facsimile

eric@dicklawfirm.com

/s/ Randall L. Kallinen

Randall L. Kallinen

SBN: 00790995

FIN: 19417

**KALLINEN LAW, PLLC**

511 Broadway Street

Houston, Texas 77012

(713) 320-3785 Office

(713) 893-6737 Facsimile

AttorneyKallinen@aol.com

**ATTORNEYS FOR PLAINTIFF**

**PHILLIP PAUL BRYANT**